

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VIVIAN BURNS,

Plaintiff,

v.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant.

Case No. C20-1555RSM

ORDER REVOKING IN FORMA  
PAUPERIS STATUS ON APPEAL

This matter comes before the Court on a referral from the Ninth Circuit to determine whether in forma pauperis (“IFP”) status should continue on appeal. Dkt. #82. *Pro se* Plaintiff Vivian Burns was granted leave to proceed IFP in this matter on October 21, 2020. Dkt. #4.

Plaintiff’s claims were dismissed on summary judgment on November 29, 2021. Dkt. #49. The case was closed. *Id.* Plaintiff continued to file motions. The Court denied Rule 59 and Rule 60 motions and a motion for reconsideration filed by Plaintiff. Dkts. #57 and #64. On January 25, 2022, the Court stated it “will not consider further memoranda or declarations filed in this case that attempt to argue the merits of [Plaintiff’s] dismissed claims.” Dkt. #61 at 2. On March 3, 2022, the Court struck Plaintiff’s “2nd Motion for Substantive Due Process and Evidentiary Hearing” as duplicative. Dkt. #66. In that Minute Order, the Court stated it “will

1 continue to strike further filings in this case that attempt to argue the merits of Plaintiff's  
2 dismissed claims or which seek relief that has already been denied."

3 On March 10, 2022, the Court denied a Motion to reopen the time to file an appeal. Dkt.  
4 #68.

5 Ms. Burns has filed other frivolous motions. For example, on March 31, 2022, Plaintiff  
6 filed a "Motion to Vacate Void Judgment for Lack of Subject Matter Jurisdiction and Personal  
7 Jurisdiction." Dkt. #73. The Court found the filing frivolous, untimely, and moot, and struck it  
8 via Minute Order. Dkt. #74. Six months later, Ms. Burns filed a 16-page "Motion to Show Cause  
9 Why Defendant Should Have Summary Judgment Contrary to Law." Dkt. #75. Ms. Burns  
10 addressed the merits of her case, repeated previously made arguments, and raised alleged rule-  
11 violations that the Court found to be frivolous, untimely, and moot in a September 26, 2022,  
12 Minute Order. Dkt. #78. She cited no valid basis for obtaining her requested relief in a closed  
13 case. The Court struck the filing. *Id.* Her appeal is based on this Minute Order. *See* Dkt. #79.  
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16 Where, as here, a party was permitted to proceed IFP in the District Court, the party may  
17 proceed on appeal in forma pauperis without further authorization unless the District Court  
18 certifies in writing that the appeal is not taken in good faith or that the party is not otherwise  
19 entitled to proceed IFP. Fed. R. App. P. 24(a)(3); 28 U.S.C. § 1915(a)(3) ("An appeal may not  
20 be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.").  
21 An appeal is taken in "good faith" where it seeks review of at least one issue or claim that is  
22 found to be "non-frivolous." *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002).  
23 An issue is "frivolous" where it "lacks an arguable basis either in law or in fact." *Neitzke v.*  
24 *Williams*, 490 U.S. 319, 325 (1989). Legally frivolous claims are those "based on an indisputably  
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meritless legal theory,” such as claims against defendants who are immune from suit or for infringement of a legal interest that clearly does not exist. *Id.* at 327.

Ms. Burns’s claims were dismissed after careful review of applicable law and the record, including Ms. Burns’s deposition testimony. The time for filing an appeal based on that dismissal has long since expired. The Court’s subsequent Orders have largely been based on the Civil Rules and other procedural grounds, and in any event the time for appealing many of those orders has also expired. The September 26, 2022, Minute Order at issue essentially repeats the procedural history and finds that Ms. Burns cites no valid basis for reopening the case. The Court believes that any appeal of this ruling necessarily lacks an arguable basis in law or in fact.

This Court cannot find that Plaintiff’s appeal has been taken in good faith. The Court maintains that, by its assessment of the Complaint, Plaintiff’s appeal is clearly frivolous. Accordingly, the Court hereby FINDS AND ORDERS that Plaintiff’s in forma pauperis status is REVOKED.

DATED this 9<sup>th</sup> day of January, 2023.



RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE